

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 07-0035P
Individual Income Tax
For the Calendar Year 2003**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of a calendar year individual income tax return for the year 2003. The taxpayer is an Indiana taxpayer.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer had not received all of the relevant information necessary to complete the income tax return. The Department points out that the taxpayer could have paid an estimate at the due date, and then, file for a refund when all of the necessary information was on hand.

With regard to the compliance record, the taxpayer has had a late penalty in each of the three previous years. The Department does not feel the taxpayer's compliance record is a quality compliance record. The Department feels the compliance record is a negative factor in the abatement of penalty.

The regulation which references penalty is 45 IAC 15-11-2(b) which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.